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November 26, 1996

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William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Office of Secretary

Re: Comments of RSA Applicants  
in In re Cellular Communications of Puerto Rico, Inc.  
Petition for Declaratory Ruling or Rule Making To  
Determine Whether Competitive Bidding Procedures Should  
be Used to License Certain Cellular Rural Service Areas;  
RM-8897

Dear Mr. Caton:

Enclosed herewith on behalf of RSA Applicants are four copies of the Comments of RSA Applicants, the original of which was filed by their attorneys in the above captioned proceeding on November 25, 1996. The additional four copies were inadvertently omitted at the time of filing.

Also enclosed herewith is an original and four copies of the Erratum to Comments Of RSA Applicants to be associated with the above referenced Comments.

Sincerely,



Louis Gurman

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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*In the Matter of*

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| Procedures Should be Used to License           | ) |         |
| Certain Cellular Rural Service Areas           | ) |         |

**Erratum to  
COMMENTS OF RSA APPLICANTS**

The Comments of RSA Applicants filed by their attorneys in the above captioned proceeding on November 25, 1996 is hereby corrected as follows:


In the Table of Contents, page i, Subsection II. A., add the word "Operator" after the word "Permanent."

In footnote 9, page 5, please add the following citations at the end of the footnote: "See, In re Ellis Thompson Corp., Summary Decision of ALJ Joseph Chachkin, CC Docket No. 94-136, File No. 14261-CL-P-134-A-86, rel. Nov. 14, 1995, at ¶ 14; and Cellular Lottery Selection, Report and Order, 98 FCC 2d 175, 186-187 (1984). See also, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994) (finding that cellular licensee control guidelines as applied in PCS were 'sufficiently flexible . . . to ensure that [applicants] participate actively in the day-to-day management of the company while allowing reasonable flexibility to obtain services from outside experts as well.' Id. at ¶ 85. See also, Delray Cellular Associates, 3 FCC 2d 5162 (1988), wherein the Commission found the occupations of a licensee's principals to be of "no decisional relevance" because no facts were raised concerning the 'licensee's inability to participate in, or make satisfactory arrangements to ensure efficient development of the cellular system.' Id. at 5163 n.5."

Copies of the corrected pages are attached hereto.

Respectfully submitted,

RSA APPLICANTS

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Its Attorneys

November 26, 1996

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would have the Commission take into account the fact of its interim operation and willingness to assume the financial risk involved therein as circumstances which should define and perhaps determine the outcome of the permanent licensing process.<sup>9/</sup> Commission grant of CCPR's Petition would result in reversible error.

**2. Pursuant to Court Precedent, The Commission cannot Open the Cut-off Window to New Applicants.**

Presumably, the motivation behind CCPR's Petition is the hope that the FCC will dismiss all the pending RSA applications, or open up the auction to new applicants -- including CCPR. However, it is impermissible for the FCC to do so. Applications may not be so blithely dismissed and the filing window cannot be reopened eight years after it was established. In McElroy Electronics Corp. v. FCC,<sup>10/</sup> the court stated, "as against latecomers, timely filers who have diligently complied with the Commission's requirements have an equitable interest in enforcement

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<sup>9/</sup>Even if the experience of existing IOA operators could be taken into account, the Commission has repeatedly held that expertise may be purchased by lottery winners and their lack of experience does not prevent the rapid deployment of quality cellular service. See, In re Ellis Thompson Corp., Summary Decision of ALJ Joseph Chachkin, CC Docket No. 94-136, File No. 14261-CL-P-134-A-86, rel. Nov. 14, 1995, at ¶ 14; and Cellular Lottery Selection, Report and Order, 98 FCC 2d 175, 186-187 (1984). See also, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994) (finding that cellular licensee control guidelines as applied in PCS were "sufficiently flexible . . . to ensure that [applicants] participate actively in the day-to-day management of the company while allowing reasonable flexibility to obtain services from outside experts as well." Id. at ¶ 85. See also, Delray Cellular Associates, 3 FCC 2d 5162 (1988), wherein the Commission found the occupations of a licensee's principals to be of "no decisional relevance" because no facts were raised concerning the "licensee's inability to participate in, or make satisfactory arrangements to ensure efficient development of the cellular system." Id. at 5163 n.5.

<sup>10/</sup>86 F.3d 248 (D.C. Cir. 1996).

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**COMMENTS OF RSA APPLICANTS**

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Appendix A: RSA Applicants

Appendix B: Letter from Gregory J. Vogt to Nancy J. Vicotry

Appendix C: Public Notice, dated November 5, 1991

Appendix D: Letter from Gregory J. Vogt to Jonathan D. Blake



## SUMMARY

RSA Applicants, by their attorneys, submit their Comments in opposition to the proposal set forth in Cellular Communications of Puerto Rico, Inc.'s ("CCPR's") Petition for Declaratory Ruling or, in the Alternative, For Rule Making (the "Petition"), filed with the Commission on September 9, 1996. CCPR's Petition requests that the Commission employ competitive bidding, instead of a lottery, to select a permanent licensee in RSA No. 727A, Ceiba, Puerto Rico, where CCPR presently provides service under a grant of Interim Operating Authority ("IOA"). Subsequently, the Commission released a Public Notice stating that it would treat CCPR's Petition as a petition for rule making, and it requested comments. RSA Applicants argue that the Commission should not subject any pending cellular RSA applications, all of which were filed prior to July 26, 1993, to competitive bidding procedures.

CCPR premises its position essentially on two grounds: (1) that an auction would be apt to attract more qualified operators such as CCPR, many of whom already operate under IOA, who could be expected to deliver service more promptly, and (2) that RSA's are intrinsically more valuable than unserved areas and therefore the Commission's prior rule making exempting pre-July 26, 1993 unserved area applications should not apply. First, any Commission decision grounded on either of these arguments would be directly inconsistent with the Communications Act and controlling precedent. Such a drastic change of action would be an impermissible retroactive application of the law upon applicants who relied in good faith upon existing cut-off rules and lottery procedures. Second, CCPR's request for change in licensing procedure is directly contrary to the conditions it accepted when it received grant of interim operating authority,

and would contravene Congressional intent expressed in the Omnibus Budget Reconciliation Act of 1993.

CCPR makes its proposal presumably because it plans to participate in the auction. However, CCPR is prohibited from becoming the initial permanent licensee for that market under any licensing regime. The Commission's policy with regard to granting a party's application for IOA is to require dismissal of that party's pending application for permanent authority for the subject market. Therefore, Commission grant of CCPR's Petition would result in reversible error.

Presumably, CCPR's motivation behind its Petition is the hope that the FCC will dismiss all the pending RSA applications and open up the auction to new applicants -- including CCPR. However, it is impermissible for the FCC to do so. According to precedent, such applications may not be dismissed and the filing window cannot be reopened.

The postponement of the scheduled lottery in order to make way for the possibility of an auction was essentially a stay of a Commission order and such a stay is arbitrary and capricious without an explanation as to how such action meets the requirements of a stay or comports with the public interest.

Utilizing competitive bidding to award cellular RSA licenses in which applications have been pending before July 26, 1993 is contrary to the Congressional objectives. Congress specifically instructed the Commission not to base findings of public interest on the expectation of Federal revenues from auction procedures. Yet, the Commission's proposal indicates the Commission is focusing exclusively on such revenue potential of an auction. The Commission should not award cellular RSA licenses through competitive bidding procedures.

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**COMMENTS OF RSA APPLICANTS**

RSA Applicants<sup>1/</sup> by their attorneys and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC's" or "Commission's") rules,<sup>2/</sup> hereby submits their Comments in opposition to the proposal set forth in Cellular Communications of Puerto Rico, Inc.'s ("CCPR's") Petition for Declaratory Ruling or, in the Alternative, For Rule Making (the "Petition"), filed with the Commission on September 9, 1996. CCPR's Petition requests that the Commission employ competitive bidding, instead of a lottery, to select a permanent licensee in RSA No. 727A, Ceiba, Puerto Rico, where CCPR presently provides service under a grant of Interim Operating Authority ("IOA"). The Commission released a Public Notice on October 24, 1996, stating that it would treat CCPR's Petition as a petition for rule making, generally requesting comments on the applicability of competitive bidding in awarding remaining cellular

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<sup>1/</sup>RSA Applicants is a consortium of companies listed on Appendix A, which have applications pending for one or more of the markets potentially subject to relottery.

<sup>2/</sup>47 C.F.R. § 1.415.

Rural Service Area ("RSA") licenses where the original lottery winner has been disqualified.<sup>3/</sup> For reasons set forth herein, the Commission should not subject any pending cellular RSA applications, all of which were filed approximately eight years ago, to competitive bidding procedures.

## I. INTRODUCTION

CCPR premises its Petition essentially on two grounds: first, that an auction would be apt to attract more qualified operators such as CCPR, many of whom already operate under IOA, who could be expected to deliver service more promptly, and second, that RSA's are intrinsically more valuable than unserved areas and therefore the Commission's prior rule making order exempting pre-July 26, 1993 unserved area applications should not apply. The first of these arguments is wholly unsupported in fact, and any Commission decision grounded on either of these arguments would be directly inconsistent with the Communications Act and controlling precedent. Such a drastic change of action, after years of the applicants' reliance on the Commission's rules, would be an impermissible retroactive application of the law upon applicants who relied in good faith upon existing cut-off rules and lottery procedures. Moreover, the change advocated by CCPR is directly contrary to the conditions it accepted when it received grant of IOA, and would contravene Congressional intent expressed in the Omnibus Budget Reconciliation Act of 1993 (the

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<sup>3/</sup>Cellular Communications of Puerto Rico, Inc. Petition for Declaratory Ruling or Rule Making to Determine Whether Competitive Bidding Procedures Should Be Used To License Certain Cellular Rural Service Areas, Public Notice, RM-8897, rel. Oct. 24, 1996 ("Public Notice").

"Budget Act").<sup>4/</sup> In fact, the Commission has previously recognized the "compelling public interest justifications for using lotteries rather than auctions for most services for which applications had been filed before July 26, 1993,"<sup>5/</sup> and it has so held specifically in the case of RSA's.<sup>6/</sup> In effect, CCPR's Petition is tantamount to an untimely petition for reconsideration of the Commission's decision to use its discretion under the Budget Act to relottery the remaining RSA's.

## II. ARGUMENTS

### A. Grant of CCPR's Petition Would Directly Violate the Commission's IOA Policy for RSA's and Would Delay the Advent of Service by a Permanent Operator.

CCPR makes its proposal presumably because it plans to participate in the auction. However, if CCPR (or any affiliate) was an original applicant for Ceiba, Puerto Rico, its application for permanent authority should have been dismissed prior to receipt of IOA under the FCC's IOA policy for RSA's. In any event, CCPR is no longer entitled -- if it ever was -- to participate in any licensing selection process with those applications filed within the pertinent cut-off window.

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<sup>4/</sup>Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002, 107 Stat. 312 (1993) (codified at 47 U.S.C. §§ 309(j)).

<sup>5/</sup>Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Memorandum Opinion and Order, 9 FCC Rcd 7387, 7390 (1994) ("Competitive Bidding MO&O"). The Commission decided not to award cellular unserved area licenses by auction to applicants who filed prior to July 26, 1993.

<sup>6/</sup>Lottery Notice, Mimeo No. 63896, rel. July 12, 1996. The Commission announced that the lottery for six RSA's will be held in accordance with the Commission's Memorandum Opinion and Order, PP Docket 93-253, FCC 94-123, 9 FCC Rcd 7387 (1994) [hereafter "Unserved Auth MO&O"].

**1. Commission Policy Governing RSA's Precludes the Simultaneous Prosecution of Applications for Permanent and Interim Authority.**

CCPR is the current provider of nonwireline cellular service for RSA No. 727A pursuant to a grant of IOA. As such, CCPR is prohibited from becoming the initial permanent licensee for that market under any licensing regime. The Commission's policy with regard to granting a party's application for IOA is to require dismissal of that party's pending application for permanent authority for the subject market. The Commission has consistently applied this policy in the RSA's.<sup>7/</sup> In the cellular service, the rationale underlying this policy was articulated by the Commission in La Star Cellular Telephone Co. ("La Star"), and subsequently affirmed by the United States Court of Appeals for the District of Columbia Circuit.<sup>8/</sup> Boiled to its essence, the policy is designed to assure fairness in the permanent licensing process, i.e. to assure that the fact of interim operation and concomitant investment should not in any way influence the FCC's selection of the ultimate licensee. All IOA grants in RSA's are specifically conditioned to assure a smooth, non-profit transition to a different permanent operator. However, CCPR, after receiving the privilege of the IOA license, now wishes to walk away from its burdens. And it

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<sup>7/</sup>See, Letter from Gregory J. Vogt, Chief Mobile Services Division, Common Carrier Bureau to Nancy J. Victory, Esq. dated Nov. 1, 1991. "Interim Operating Authority will be considered only if the applicant does not also have an application for permanent authority pending in the matter." id. (Appendix B) and Public Notice, Report No. CL-92-14, rel. Nov. 1991 (granting IOA application of C-SW Joint Venture)(Appendix C). See also JAJ Cellular v. FCC, 54 F.3d 834, 841 (D.C. Cir. 1995 ) (taking note of the Commission's policy that "prohibits simultaneous applications for interim and permanent authority . . . when no service is currently being provided."), and Letter from Gregory J. Vogt, Chief Mobile Services Division, Common Carrier Bureau to Jonathan D. Blake, Esq. dated Oct. 3, 1991 (Appendix D).

<sup>8/4</sup> FCC Rcd 3777 (1989), aff'd sub nom La Star Cellular Telephone Co. v. FCC, 899 F.2d 1233 (D.C. Cir. 1990).

would have the Commission take into account the fact of its interim operation and willingness to assume the financial risk involved therein as circumstances which should define and perhaps determine the outcome of the permanent licensing process.<sup>2/</sup> Commission grant of CCPR's Petition would result in reversible error.

**2. Pursuant to Court Precedent, The Commission cannot Open the Cut-off Window to New Applicants.**

Presumably, the motivation behind CCPR's Petition is the hope that the FCC will dismiss all the pending RSA applications, or open up the auction to new applicants -- including CCPR. However, it is impermissible for the FCC to do so. Applications may not be so blithely dismissed and the filing window cannot be reopened eight years after it was established. In McElroy Electronic Corp. v. FCC,<sup>10/</sup> the court stated, "as against latecomers, timely filers who have diligently complied with the Commission's requirements have an equitable interest in enforcement of the cut-off rules."<sup>11/</sup> Therefore, whether the subject RSA licenses are ultimately disseminated by lottery or auction, only those with timely filed pending applications may participate. Because those entities with pending applications have relied on and diligently followed the Commission's cut-off rules and because the cut-off period for the subject RSAs expired long ago, those applicants

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<sup>2/</sup>Even if the experience of existing IOA operators could be taken into account, the Commission has repeatedly held that expertise may be purchased by lottery winners and their lack of experience does not prevent the rapid deployment of quality cellular service.

<sup>10/</sup>86 F.3d 248 (D.C. Cir. 1996).

<sup>11/</sup>Id. at 257.

have a strong equitable interest in the enforcement of the cut-off rules which may not be lightly overcome. As such, the licensing process may not be opened to CCPR or any other newcomer.

**3. The Commission's "Postponement" of the RSA Lottery was Arbitrary and Capricious.**

The Commission announced the lottery of the subject RSAs by a Lottery Notice released on July 12, 1996.<sup>12/</sup> That notice was more than an interlocutory action. It was an order citing to the Unserved Area MO&O as the basis for proceeding with relotteries in designated RSAs. That order was not set aside and became final. Subsequently the FCC "postponed" the lottery without any explanation.<sup>13/</sup> This "postponement" was essentially a stay of a Commission order and such a stay was arbitrary and capricious without any explanation as to how such action met the requirements for a stay or otherwise comported with the public interest findings which the Commission relied upon in the past to deny requests to stay relotteries.<sup>14/</sup> A stay harms both public and private interests,<sup>15/</sup> and no countervailing public interest benefit has been asserted.

**B. Auctioning of Cellular RSA Applications Filed Prior to July 26, 1993 Constitutes an Impermissible Retroactive Application of the FCC's Rules.**

The licensing of cellular RSAs by auction as proposed in the Commission's Public Notice would constitute a retroactive application of new regulations in an impermissible context. The

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<sup>12/</sup> Lottery Notice, Mimeo No. 63896, rel. July 12, 1996.

<sup>13/</sup>The announced lottery was postponed by Lottery Notice, Mimeo No. 65051, rel. Sept. 10, 1996.

<sup>14/</sup>Cells Company L.P., Memorandum Opinion & Order, 7 FCC Rcd 2143 1992.

<sup>15/</sup> Id. at 2144-2145.



concept that applicants are entitled to rely on the processing rules they originally filed under is embedded in Part 22. Section 22.959 of the Rules provides that, "Pending applications for authority to operate the first cellular system on a channel block in an MSA or RSA market continue to be processed under the rules governing the processing of such applications that were in effect when those applications were filed unless the Commission determines otherwise in a particular case." 47 C.F.R. §22.959. CCPR has not advanced any valid reason for the Commission to determine otherwise in the context of the remaining RSA's.

In the case of RSA applicants who filed approximately eight years ago, they relied solely on the prospect of a lottery regime. In Maxcell Telecom Plus, Inc. v. FCC in the Court upheld the FCC's retroactive employment of a lottery regime because the agency's change was grounded in valid public interest considerations, but most importantly because the affected cellular applicants had notice of the possible change prior to filing their applications.<sup>16/</sup> In fact, the FCC itself recognized, in connection with cellular applications filed five years after the RSA applicants, that "the legislative history . . . demonstrates that Congress recognized the equities involved in the auction law's grandfathering provisions for applications on file with the Commission before July 26, 1993."<sup>17/</sup> The July 12, 1996, Lottery Notice found these equities to be equally germane to RSA applicants..

It is evident that by postponing the lottery and attempting to implement competitive bidding procedures for remaining RSA's at this late juncture, the FCC's goal is the procurement of

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<sup>16/</sup>815 F.2d 1551 (D.C. Cir. 1987).

<sup>17/</sup>Unserved Area, 9 FCC Rcd at 7391.

revenue that will result from the auction of the licenses. Yet, that is specifically what Congress ordered the Commission not to do. The Commission is forbidden from basing a finding of public interest on the expectation of revenues generated by auctions.<sup>18/</sup> Furthermore, the Commission is completely disregarding its Congressionally mandated objective to promote the rapid deployment of services.<sup>19/</sup> Rather than being driven solely by improper financial considerations, the Commission should apply the equitable processing rule of Section 22.959. In the case of RSA's, the private interests of the applicants and the interest of the public are coincident. All the Commission has to do is follow its rules.

**C. Auctioning the Remaining RSA Licenses Would Violate the Objectives of the Omnibus Budget Reconciliation Act of 1993.**

The Budget Act amended the Communications Act of 1934, (the "Communications Act")<sup>20/</sup> to add a new Section 309(j) which granted the FCC authority to employ competitive bidding procedures to choose from among two or more mutually exclusive applications for initial licenses. In identifying classes of licenses and permits to be issued by competitive bidding, the Budget Act requires the Commission to promote several objectives including:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

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<sup>18/</sup>Budget Act, § 6002(a).

<sup>19/</sup>Budget Act, § 6002.

<sup>20/</sup>Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. ("Communications Act").

- (B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
- (C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and
- (D) efficient and intensive use of the electromagnetic spectrum.<sup>21/</sup>

Utilizing competitive bidding to award cellular RSA licenses in which applications have been pending before July 26, 1993 is contrary to the Congressional objectives.<sup>22/</sup> The administrative delays caused by development of auction rules after so many years of delays and postponements will only further delay the deployment of cellular service to the members of the public residing within the rural markets in question. Auctioning the licenses will promote, not avoid, excessive concentration of licenses and will likely exclude small businesses by awarding the licenses to a small group of large companies with deep pockets. Although one of the many objectives of the Budget Act is to recover a portion of the value of the public spectrum, Congress also provided a "Special Rule" in which it provides the Commission authority to issue licenses pursuant to a lottery if "one or more applications for such licenses were accepted for filing by the Commission before July 26, 1993."<sup>23/</sup>

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<sup>21/</sup>Budget Act, § 6002

<sup>22/</sup>In its decision not to award cellular unserved area applications accepted for filing prior to July 26, 1993 by auction, the Commission stated that the Congressional intent and the public interest would be best served by using lottery procedures to award such licenses. Competitive Bidding MO&O, 9 FCC Rcd at 7390.

<sup>23/</sup>Budget Act, § 6002(e).

**1. Awarding RSA Licenses Through Competitive Bidding Procedures Will Delay the Deployment of Cellular Service to the Public, Thereby Hindering the Efficient and Intensive Use of the Electromagnetic Spectrum.**

Applicants have had pending RSA applications on file since 1988. While the Commission languidly debates whether it should change its rules at this late juncture and holds the RSA random selection process hostage,<sup>24/</sup> the public is denied competitive cellular service by a permanent operator and the 1988 applicants are denied due process. Now, the Commission is suggesting that the public continue to wait even longer as it implements a notice and comment rule making. This does not even take into account delays potentially engendered by the quite legitimate appeals of parties adversely affected by the proposed retroactive rule change. In its decision not to auction cellular unserved area licenses filed prior to July 26, 1993, the Commission determined that avoiding the delays that might result from awaiting the implementation of auction rules plus the fact that the applicants had already incurred substantial delays were compelling justifications for maintaining the lottery system.<sup>25/</sup>

Congress specifically instructed the Commission not to "base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding."<sup>26/</sup> Yet, like a horse with blinders on, the Commission's proposal does just that. The Commission's auction proposal does not promote rapid efficient deployment of services

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<sup>24/</sup>Budget Act, § 6002(e).

<sup>25/</sup>Competitive Bidding MO&O, 9 FCC Rcd at 7390.

<sup>26/</sup>Budget Act, § 6002(a).

to the public. In fact, the proposal will harm the segment of the public Congress most wished to protect: those members residing in rural areas.

**2. Contrary to its Congressional Mandate, the FCC's Proposal to Award the RSA Licenses by Auction will Promote, Not Avoid, Excessive Concentration of Licenses.**

In the six RSA markets that are the subject of the FCC's immediate proposal, there is a range of from 491 to 702 applicants.<sup>27/</sup> Under the current lottery system, each of those applicants has an equal chance to acquire the license and serve the public. While there can be no guarantee as to how long a lottery winner will actually operate in a market, an auction would likely concentrate the licenses in the hands of a few large companies already operating under interim

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<sup>27/</sup>Lottery Notice, FCC to Hold Domestic Public Cellular Telecommunications Service Lottery for RSA Markets in Which Previous Winner Was Defective, Mimeo No. 63896 (rel. July 12, 1996). The notice lists 491 eligible applicants for the Puerto Rico 5, frequency block A RSA, 555 for the Arkansas 9, frequency block A RSA, 581 for the North Dakota 3, frequency block A RSA, 667 for the Florida 11, frequency block A RSA, 672 for the Pennsylvania 4, frequency block A RSA, and 702 for the Minnesota 11, frequency block A RSA.

operating authority.<sup>28/</sup> In fact, the Commission itself recognized that random selection "may increase the likelihood of new entrants offering service in the cellular marketplace."<sup>29/</sup>

RSA Applicants believe the Commission was correct when it accorded equitable treatment to 1993 unserved area applicants. "We are not persuaded that either Congress's intentions or the public interest support the administrative upheaval and dislocation in business plans that would result from the use of auctions in these circumstances. Indeed, no assurance even exists that using auctions for these particular applications would expedite the deployment of service to the public, a principal objective of the auction law."<sup>30/</sup> It should do no less here.

### III. CONCLUSION

Congress foresaw a special need for which it decided to include the "Special Rule" of Section 6002(e) of the Budget Act, allowing the Commission to award licenses via random selection if one or more applications for such licenses were accepted for filing by the Commission

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<sup>28/</sup>In response the Commission's Notice of Proposed Rule Making in which it asked for comments on whether cellular unserved area applications filed before July 26, 1996 should be subjected to the competitive bidding process, the commentators were divided, with the big corporations advocating auctions on one side and the small businesses and partnerships urging the Commission to maintain lotteries on the other. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 8 FCC Rcd 7635, 7662 (1993). See, e.g., Telephone and Data Systems Comments at 5; BellSouth Corporation Comments at 44-45; McCaw Cellular Communications, Inc. Comments at 30-31; Southwestern Bell Corporation Comments at 12. Then see, e.g., The Quick Call Group Comments at 1; Van R. Boyette Comments at 1; John Dudinsky, Jr. Comments at 1; Thomas Crema Comments at 1; David F. Gencarelli Comments at 1; Small RSA Operators Comments at 12; and The Coalition for Equity in Licensing Comments at 5.

<sup>29/</sup>Unserved Area MO&O at 7391.

<sup>30/</sup>Unserved Area MO&O, 9 FCC Rcd at 7392.

prior to July 26, 1993.<sup>31/</sup> As the Commission itself recognized, "Congress ultimately decided that . . . considerations of equity and administrative cost and efficiency, justified the use of lotteries for those applicants who, in reliance on the Commission's existing lottery procedures, had filed applications prior to July 26th [1993]."<sup>32/</sup> Only a few months ago the Commission agreed that the same principles were pertinent to RSA's when it scheduled long overdue relotteries. The Commission should not depart from that proper course.

Respectfully submitted,

RSA APPLICANTS

By:



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Its Attorneys

November 25, 1996

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<sup>31/</sup>Budget Act, § 6002(e).

<sup>32/</sup>Competitive Bidding MO&O, 9 FCC Rcd at 7391.

## APPENDIX A

### RSA APPLICANTS

The following entities and individuals, all of whom have pending cellular applications for Rural Service Areas, comprise the RSA Applicants:

B. Scott Reardon, III  
Schuylkill Mobile Fone, Inc.  
RSA - Cellular Partners  
Turnpike Cellular Partners



**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

November 1, 1991

In reply refer to:  
63500-TER

Nancy J. Victory, Esquire  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Re: Florida Cellular Mobil Communications Corporation  
Market No. 468A Maryland 2 - Kent  
File No. 00499-CL-CP-91  
Application of Interim Operating Authority

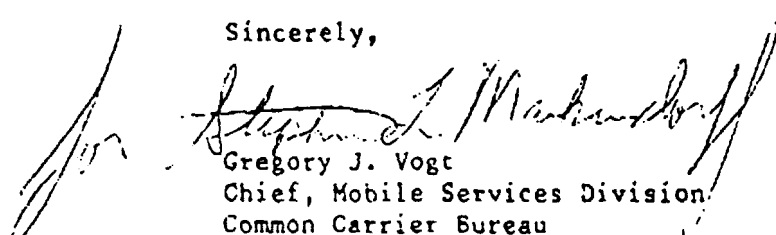
Dear Ms. Victory:

This concerns the above-referenced application for interim operating authority in Market No. 468A.

Florida Cellular Mobil Communications Corporation's (FCMCC) application for permanent authority for Market No. 468A was dismissed on January 18, 1991. FCMCC subsequently filed a petition for reconsideration and reinstatement, which is now pending. Because FCMCC has requested that its application be reinstated, it remains an applicant for Market No. 468A. Interim operating authority will be considered only if the applicant does not also have an application for permanent authority pending in that market.

Accordingly, we are returning the above-referenced application for interim operating authority as unacceptable for filing. This action, however, will not prejudice the Commission's decision on FCMCC's application for permanent authority.

Sincerely,



Gregory J. Vogt  
Chief, Mobile Services Division  
Common Carrier Bureau

cc: Florida Cellular Mobil Communications Corporation  
C-SW Joint Venture  
Steven Fortnoy